

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

Software Modification/Development – Automated Tracking of Fresh Water Usage and Disposition Related to Unconventional (Well Stimulation-e.g. Fracking, Acidizing, and Cyclic Steam) and Conventional Oil Drilling Operations

1 Introduction

1.1 General Remarks

1. The CA Department of Conservation's (DOC) is responsible for..." promoting environmental health, economic vitality, informed land-use decisions and sound management of our state's natural resources." The Division of Gas and Geothermal Resources (DOGGR) referred to in this document, as "the Division" is the Department's office that addresses the needs of the state, local governments and industry by regulating statewide oil and gas activities with uniform laws and regulations.
2. Threat- There is a growing threat to the integrity of CA drinking and agricultural water from improperly dispositioned Unconventional and Conventional Drilling wastewater. There is an urgent need for the oil and gas industry operating in California to accurately report and verify its fresh water usage and safe wastewater disposition. The efficacy of industry reporting varies widely from state to state depending on respective drillers and state's validation efforts. Given the overwhelming volume of wastewater disposal, the state oversight efforts have proven to be extremely limited to nonexistent (to date).
3. Current Situation - The Division **does not require drillers to disclose** where contaminated wastewater from drilling operations is being disposed and does not adequately regulate underground injection of fracking and conventional wastewater despite having a legal mandate to do so. For more info - See <http://www.cleanwateraction.org/fracking-california>
4. In 2011, onshore oil and gas drilling wells in California produced more than 2.5 trillion barrels of produced water; over 126 million was produced at the Inglewood oil field of Los Angeles County.
5. Regulations- As of 2012, California has never assessed fracking's risks to California's groundwater, according to a 2012 Environmental Working Group report. The report cites a 2011 letter in which Sen. Fran Pavley asked state regulators to "provide the results of any risk assessments that the State of California has conducted regarding potential groundwater contamination associated with hydraulic fracturing." The agency responded: "The division does not know of any state risk assessment regarding potential groundwater contamination associated with hydraulic fracture." [7]
6. Injection wells- Over 25,000 oilfield injection wells are operating in the state. Injection wells are used to increase oil recovery and to dispose of the salt and fresh water produced with oil and natural gas. Underground Injection Control (UIC) Class II wells involve injecting fluids associated with oil and natural gas production operations - generally the brine that is produced when oil and gas are extracted from the earth.[29] Of particular interest are the 1,550 Class II deep injection wells currently being used to disposition unconventional and conventional produced water/ fracking wastewater. "On

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

July 2nd [2014] DOGGR ordered seven oil production companies to immediately shut down 11 waste water disposal wells in Kern County to avoid potential harm to a limited number of groundwater aquifers,”ⁱ According to USGS Earthquake Science Center’s Art McGarr, there are no high-volume wastewater injection wells in California located within areas of high population density, to his knowledge. There is also, however, no way to verify this due to the lack of state and federal disclosure laws.[30]

7. Earthquakes- Wastewater injection into disposal wells has been linked to a series of small earthquakes in Ohio [31], a large earthquake in Oklahomaⁱⁱ and the U.S. mid-continent.[32]

8. DOGGR Needs Help Regulating Class II Deep Injection Wells According to the EPA:



see

Horsley_DOGGR

USEPA consultant's report on CA underground injection program.pdf

9. Exemptions- [EPA has it’s failings –as well] A 2012 ProPublica investigation into the threat to water supplies from underground injection of waste found the EPA has granted energy and mining companies exemptions to release toxic material in more than 1,500 places in aquifers across the country. The EPA may issue exemptions if aquifers are too remote, too dirty, or too deep to supply affordable drinking water; however, EPA documents showed the agency has issued permits for portions of reservoirs that are in use, assuming contaminants will stay within the finite area exempted. More than 100 exemptions for natural aquifers have been granted in California, some to dispose of drilling and fracking waste in the state's driest parts. Though most date back to the 1980s, the most recent exemption was approved in 2009 in Kern County, an agricultural area.[33]

10. Leaks, spills, and accidents- In 2009, a jury in Kern County found that 96 million barrels of wastewater from drilling had leached from holding ponds onto a farmer's property, resulting in contamination of the aquifer beneath his land.[34] According to the Environmental Working Group: "It’s unknown if any of this wastewater came from hydraulic fracturing; what is clear is that California’s ground and drinking water are not being adequately protected from the hazards of fracking and oil and gas operations in general.”[7]

11. In 2010, contaminants from a wastewater injection well bubbled up in a west Los Angeles dog park. [35]

12. Ohio is contemplating using GIS/GPS to track fracking wastewater and recyclingⁱⁱⁱ-

1.2 Counter Threat. An independent, cost effective and automated verification (i.e. industry completely reports) and validation (i.e. government validates those reports) of the natural gas and oil industry safe and effective wastewater disposition.

2 Scope of Effort

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

2.1 Draft a Fracked Tight Oil Geographic Information System / Global Positioning System (GIS/GPS) Vehicle Tracking System referred to as “FracTrac” Specification and Implementation Plan.

1. Short description of technical effort/work packages.

a. Study Phase I

- i. Facilitate an initial “Working Group” meeting between public and industry stake holders designated SME Points of Contacts (POCs) (e.g. applicable major Drilling Companies, DOC, the Division, EPA, County and Local First Responders) pending DOC letters of introduction .
- ii. Draft, staff for comment and finalize a Memorandum of Understanding (MOU) between the major stakeholders.
- iii. Author, send/mail (hard and soft copies), receive and analyze self-administered questionnaires to/from the top five major oil drillers in the CA areas requesting similar (desk top) information (e.g. questions for Chief Information Officer’s (CIO’s) and Chief Operating Engineers re: current non-proprietary automated reporting systems, non proprietary manual reporting processes and procedures, etc. Results will be treated as business sensitive and not disclosed to other than the customer.
- iv. Perform desktop and field (if allowable by “one most representative” driller) audit of current wastewater manifesting and reporting systems. Field audits are preferred. Results will be treated as business sensitive and not disclosed to other than the customer.
- v. Perform desktop and field audit of representative EPA regional office wastewater tracking oversight (if applicable) (e.g. reporting requirements, review, quality assurance, and related hardware/software systems).
- vi. Perform desktop and field (if permissible by CA state CIO) audit of current state wastewater tracking manifesting and reporting methods and related hardware/software systems.
- vii. Perform desktop and field (if permissible by a representative county government CIO) audit of current wastewater tracking efforts, reporting and available first responder hardware and software.
- viii. Based upon the results of self-administered questionnaires, desk top and field audits perform a GAP analysis of current processes and systems. Author the GAP Analysis Report to allow public and private sector stakeholders to compare actual performance with potential performance. At its core are two questions: "Where are we?" and "Where do we want to be?"

b. Study Phase I Deliverables /Reports

- i. Trip Report(s) and recommendations, which will be treated as business sensitive and not disclosed to other than the customer.
- ii. GAP Analysis Report.

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

- iii. “Draft” Notional System Requirements Specification, which identifies internal and external trusted relationships, access, security requirements, redundancy, availability, and recommendations for standardization.
- iv. Formally staff the “Draft Notional System Requirements Specification” for comment with all participating stakeholders. Allow three weeks for response. Provide smooth/ final copy three business weeks after receipt of review comments. The final specification /report will be distributed to all concerned.

c. Study Phase II

- i. Perform industry search of commercially available software (off-the-shelf), which may be used (considering technical, cost and copyright availability criteria) for modification to meet major requirements of the finalized software (SW) and hardware (HW) requirements specification. Results will be treated as business sensitive and not disclosed to other than the customer.
- ii. Perform and publish Cost Benefit Analysis comparing estimated costs to: (a) use existing SW packages with modification versus and (b) completely develops new software applications. All estimated costs will depend upon number of interfaces required with existing private and public sector user systems.
- iii. Recommend the most cost effective system to implement.
- iv. Depending on written direction from the customer proceed to Phase III (SW development and/or modification), which will be described and priced separately under a follow-on proposal.

d. Study Phase II Deliverables /Reports

- i. Trip Report(s), which will be treated as business sensitive and not disclosed to other than the customer.
 - ii. Draft Cost Benefit Analysis Report and
 - iii. “Draft SW Procurement Specification”, which identifies internal and external trusted relationships, access, security requirements, redundancy requirements/ availability, and recommendations for standardization for the recommended most cost effective system.
- e. Formally staff the “Draft SW Procurement Specification” for comment with all participating respondents. Allow three weeks for response. Provide smooth final copy one work month after receipt of review comments.
 - f. Estimated Labor, Travel, and Other Direct Costs (ODCs) (Available upon request by valid contracting officer).
 - g. Type of Contract Sought – Cost Plus Fixed Fee
 - h. Estimated Budget (Available upon request by valid contracting officer).
 - i. Background, urgency of need statement and links/references (Available upon request by valid contracting officer).

2.2 Description of Proposed FracTrac System (Attributes and Existing SW)

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

2.3.1 CA. GIS/GPS Attributes: GIS/GPS allows the State of California to validate economically industry reporting and tracking of the transportation of oil drilling related material. CA benefits include:

- State Environmental/Law Enforcement Assistance
- Monitor Oil HAZMAT/HAZWASTE material transportation real time,
- Assist in emergency response planning,
- Assist in timely damage control and spill containment,
- Apply traffic law enforcement (enforce speed limits remotely, either real-time or post facto),
- Track and quantify fresh water usage
- Archive transportation tracking of wastewater, and
- Establish geo-fencing (e.g. no driving by schools, reservoirs, highly populated areas, etc.).

2.3.2 Oil Drillers Benefit. GIS/GPS Attributes: GIS/GPS allows industry to:

- Cost Reduce/Manage Risk,
- Eliminate unnecessary overtime,
- Contain overall transportation costs,
- Eliminate unauthorized vehicle use,
- Provide more effective and efficient routing (reducing fuel costs/carbon foot prints),
- Practice safer driving techniques, and
- Separate, eliminate, and distance drillers from future liability or inclusion with less responsible drillers.

2.3.3 Existing Software: GIS/GPS

2.3.4 While Open Source Software (OSS) where the State of CA owns the intellectual property (IP) rights is preferred [when in the best interests of CA]. However, should estimates preclude procurement of an OSS due to cost; CA should entertain a Government neutral procurement with regards to selection; and based on best value and life-cycle costs to update and operate the system. All vendors will submit a life-



Neutral Government
Software Procurement Policies.pdf

cycle cost estimate. See

GIS/GPS Provider Web Site*	http://www.pbinsight.com/welcome/mapinfo/
GIS/GPS Provider Web Site*	http://www.directionsmag.com/companies/ups-logIS/GPStics-technologies/94488
GIS/GPS Provider Web	http://www.teletrac.net/Teletrac-Solutions/solutions.html

Establish a CA Automated Fresh Water Tracking System Regarding Conventional and Unconventional Oil Production

Site*	
GPS/GPS Provider Web Site*	http://www.fleetmatics.com/our-gps-tracking-system/1

*Does not constitute advocacy.

ⁱ <http://www.caloilgas.com/doggr-reviews-injection-wells/>

ⁱⁱ <http://oilprice.com/Energy/Natural-Gas/U.S.-Government-Confirms-Link-Between-Earthquakes-and-Hydraulic-Fracturing.html>

Cause and effect?

The practice of injecting water into deep rock formations causes earthquakes, both the U.S. Army and the U.S. Geological Survey have concluded.

The U.S. natural gas industry pumps a mixture of water and assorted chemicals deep underground to shatter sediment layers containing natural gas, a process called hydraulic fracturing, known more informally as "fracking." While environmental groups have primarily focused on fracking's capacity to pollute underground water, a more ominous byproduct emerges from U.S. government studies— that forcing fluids under high pressure deep underground produces increased regional seismic activity

ⁱⁱⁱ <http://www.dispatch.com/content/stories/local/2013/02/16/fracking-recyclers-a-mystery.html>

Robert T. Nast
Camp Nast Associates, LLC
3600 S. Harbor Blvd. #148
Oxnard, CA 93035
(805) 984-5147
campnastone@gmail.com

RECEIVED

APR 27 2012

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

April 16, 2012

Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street
Sacramento, CA 95814

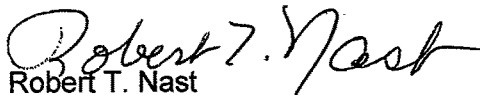
Dear Sir,

Enclosed for your review and your addition of a title and summary, please find my proposed initiative measure to be submitted to the electors, relating to taxation.

I, Robert T. Nast, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Thank you for your time and attention.

Sincerely,


Robert T. Nast
Camp Nast Associates, LLC

04/04/12 05:08 PM
RN 11 30433 PAGE 1

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

12-point
Boldface
Type

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

Type: Roman
Boldface not
smaller than
12-point

We, the undersigned, registered, qualified voters of California, residents of County (or City and County), hereby propose amendments to the Public Resources Code and the Revenue and Taxation Code, relating to taxpayers, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of measure) read as follows:

SECTION 1. Section 3017 is added to the Public Resources Code, to read:

3017. "GPS/GIS data" means information derived from a global positioning system represented on a geographic information system.

SEC. 2. Section 3018 is added to the Public Resources Code, to read:

3018. "Hydraulic fracturing" means a technique used in preparing a well that typically involves the pressurized injection of water and a mix of chemicals, compounds, and materials into an underground geologic formation in order to fracture the formation, thereby causing or enhancing, for the purposes of this division, the production of oil or gas from a well.

SEC. 3. Section 3210 of the Public Resources Code is amended to read:

3210. (a) The owner or operator of any well shall keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well.

(b) A person carrying out hydraulic fracturing on behalf of an owner or operator at a well shall provide to that owner or operator a complete list of the chemical constituents used in the hydraulic fracturing fluid and each chemical's associated Chemical Abstracts Service (CAS) numbers, for the purposes of accurately and completely maintaining the well's log, history, and core record, and ensuring compliance with the disclosure requirements of this article.

(c) A person carrying out hydraulic fracturing on behalf of an owner or operator at a well shall provide to that owner or operator the amount and disposition of water and hydraulic fracturing fluid recovered from each well prior to the reporting of the water produced pursuant to Section 3227, for the purposes of accurately and completely maintaining the well's log, history, and core record, and ensuring compliance with the disclosure requirements of this article.

SEC. 4. Section 3213 of the Public Resources Code is amended to read:

~~3213. The history shall show the~~

3213. (a) The history of the drilling of the well shall show all of the following:

(1) The location and amount of sidetracked casings, tools, or other material, the depth and quantity of cement in cement plugs, the shots of dynamite or other explosives, and the results of production and other tests during drilling operations.

(2) The amount and source of water used in the exploration of or production from the well, which shall be updated annually.

(3) Any radiological components or tracers injected into the well and a description of the recovery method, if any, for those components or tracers, the recovery rate, and the disposal method for recovered components or tracers.

(b) If hydraulic fracturing was used at the well, the history of the drilling of the well shall also include both of the following:

(1) A complete list of the chemicals used in the hydraulic fracturing. This list shall include the names of all of the chemicals used and their Chemical Abstracts Service (CAS) numbers.

(2) The amount and disposition of water and hydraulic fracturing fluid recovered from each well prior to the reporting of the water produced pursuant to Section 3227.

SEC. 5. Section 3215 of the Public Resources Code is amended to read:

3215. (a) Within 60 days after the date of cessation of drilling, rework, hydraulic fracturing, or abandonment operations, or the date of suspension of operations, the owner or operator shall file with the district deputy, in a form approved by the supervisor, true copies of the log, core record, and history of work performed, and, if

made, true and reproducible copies of all electrical, physical, or chemical logs, tests, or surveys ~~in such form as the supervisor may approve shall be filed with the district deputy.~~ Upon a showing of hardship, the supervisor may extend the time within which to comply with ~~the provisions of~~ this section for a period not to exceed 60 additional days.

(b) The owner or operator shall also submit to the supervisor information provided in the history pursuant to subdivision (b) of Section 3213, and the supervisor shall add this information to existing Internet maps on the division's Internet Web site, and make the information available to the public in such a way that the list of chemicals is associated with each specific well where those chemicals were injected.

(c) On or before January 1, 2013, and annually thereafter, the supervisor shall prepare and transmit to the Legislature a comprehensive report on hydraulic fracturing in the exploration and production of oil and gas resources in California using the data provided pursuant to subdivision (b) of Section 3213. The report shall include relevant additional information, including, but not limited to, the disposition of water used in the process.

(d) A report to be submitted pursuant to subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 6. Section 3234.5 is added to the Public Resources Code, to read:

3234.5. (a) The supervisor may award, to a person who provides evidence to the supervisor showing that a violation of law has occurred in the course of the operation of a well, including, but not limited to, the improper acquisition of clean water, the submission of a false oil or gas production report, the improper disposal of wastewater

or other waste generated by the operation of the well, or unsafe work practices, an amount of not less than five thousand five hundred dollars (\$5,500) from the collection of penalties assessed for the violation.

(b) A person specified in subdivision (a) has immunity from prosecution for a violation for which he or she has provided evidence to the supervisor that led to the initiation of an action seeking the assessment of penalties for that violation.

SEC. 7. Section 3236 of the Public Resources Code is amended to read:

3236. ~~Any~~ An owner or operator, or employee ~~thereof of an owner or operator,~~ who refuses to permit the supervisor or the district deputy, or his or her inspector, to inspect a well, or who willfully hinders or delays the enforcement of ~~the provisions of~~ this chapter, and every person, whether as principal, agent, servant, employee, or otherwise, who violates, fails, neglects, or refuses to comply with any of the provisions of this chapter, or who fails or neglects or refuses to furnish any report or record ~~which that~~ may be required pursuant to ~~the provisions of~~ this chapter, or who willfully renders a false or fraudulent report, is guilty of a misdemeanor, punishable by a fine of not less than ~~one hundred dollars (\$100)~~ ten thousand dollars (\$10,000), nor more than ~~one thousand dollars (\$1,000)~~ fifty thousand dollars (\$50,000), or by imprisonment for not exceeding six months, or by both ~~such the~~ the fine and imprisonment, for each ~~such~~ offense.

SEC. 8. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed ~~twenty-five thousand dollars (\$25,000)~~ one hundred fifty thousand dollars (\$150,000) for each violation. An act of God and an act of vandalism beyond the reasonable control of the operator shall not

be considered a violation. The civil penalty shall be imposed by an order of the supervisor pursuant to Section 3225 upon a determination that a violation has been committed by the person charged. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, all of the following:

- (1) The extent of harm caused by the violation.
- (2) The persistence of the violation.
- (3) The pervasiveness of the violation.
- (4) The number of prior violations by the same violator.

(b) An order of the supervisor imposing a civil penalty shall be reviewable pursuant to Article 6 (commencing with Section 3350). When the order of the supervisor has become final and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 9. Article 6.5 (commencing with Section 3380) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 6.5. Tracking and Manifest Requirements

3380. (a) An owner or operator of a well developed for the purpose of extracting oil or gas shall submit or cause to be submitted to the supervisor real-time tracking information, consisting of global positioning system data represented on a geographic information system (GPS/GIS data), for vehicles transporting clean water used for well operation, wastewater and treated wastewater generated by the well operation, or oil or gas generated by the operation of the well.

(b) An operator of a vehicle transporting clean water used for well operation, wastewater and treated wastewater generated by the well operation, or oil or gas generated by the operation of the well shall maintain and submit to the supervisor a manifest containing information regarding the transported materials, such as the amount and characteristics of the material transported, the origin of the transported material, the destination of the transported material, the disposition of the transported material, and other information required by the supervisor for the purposes of this article.

(c) The supervisor shall make available to the public the GPS/GIS data submitted pursuant to subdivision (a) and the manifest information submitted pursuant to subdivision (b).

(d) The supervisor may conduct random inspections at an oil or gas well to ensure compliance with the requirements of this section.

SEC. 10. Chapter 8 (commencing with Section 3880) is added to Division 3 of the Public Resources Code, to read:

CHAPTER 8. COMPLAINTS OF VIOLATION

3880. For the purposes of this chapter, "division" means the Division of Labor Standards Enforcement.

3880.1. (a) An owner or operator of a well operated for the purposes of extracting oil or gas shall not discharge or otherwise discriminate against an employee because the employee does or is anticipated to do any of the following:

(1) Provides, or causes to be provided, to the employer or to a public official, information relating to a violation, or an act or omission the employee reasonably believes to be a violation, of this division.

(2) Testifies in a proceeding concerning a violation of this division.

(3) Assists or participates in those proceedings.

(4) Testifies before the Legislature on a matter within the scope of this division.

(5) Reports an illness, injury, or unsafe condition related to the owner's or operator's activities to the owner or operator or a public official.

(6) Refuses to perform his or her duties, or exercises stop work authority, related to the owner's or operator's activities regulated pursuant to this division, if the employee has a good faith belief that performing those duties could result in injury to or impairment of the health of the employee or other employees, or cause an oil spill to the environment.

(7) Objects to, or refuses to participate in, an activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of this division.

(b) For the purposes of this section, "good faith belief" means a belief actually held by a person that a reasonable person under the same circumstances would also hold.

3880.5. (a) An aggrieved employee who believes that he or she has been discharged or otherwise discriminated against by an owner or operator in violation of Section 3880.1 may, not later than 180 days after the date on which the alleged violation occurs or the date on which the aggrieved employee knows or should reasonably have known that the alleged violation occurred, file a complaint with the division alleging a violation of Section 3880.1 and identifying the owner or operator responsible for the violation.

(b) Upon receipt of a complaint, the division shall notify, in writing, the owner or operator named in the complaint of the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the procedures set forth in subdivision (c).

(c) (1) Not later than 90 days after the date of receipt of a complaint filed pursuant to subdivision (a), the division shall initiate an investigation and determine whether there is reasonable cause to believe that an aggrieved employee's complaint has merit and shall notify, in writing, the aggrieved employee and the owner or operator of its findings.

(2) The division shall, during the investigation, afford the owner or operator named an opportunity to submit to the division a written response to the complaint and

an opportunity to meet with a representative of the division to present statements from witnesses.

(3) The division shall provide an opportunity for the aggrieved employee to review the information and evidence provided by the owner or operator and to review and respond to, or rebut the complaint.

(d) (1) If the division concludes that there is a reasonable cause to believe that a violation of Section 3880.1 has occurred, the division shall issue a preliminary order providing relief specified in Section 3881 along with its findings.

(2) (A) Not later than 30 days after the notification of a preliminary order and findings, the owner or operator named may file an appeal of the findings and preliminary order with, and request a hearing before, the Office of Administrative Hearings. The filing of the appeal shall not operate to stay a reinstatement remedy contained in a preliminary order.

(B) If the owner or operator fails to file an appeal within 30 days, the preliminary order and finding shall be deemed a final order that is not subject to judicial review. The division may enforce the reinstatement order by seeking an injunction against the owner or operator from a court of competent jurisdiction.

(3) (A) The division shall dismiss a complaint filed pursuant to subdivision (a) and shall not conduct an investigation pursuant to subdivision (c) unless the complaint makes a prima facie showing that at least one activity specified in subdivision (a) of Section 3880.1 was a contributing factor in the decision to take the adverse action alleged in the complaint.

(B) An investigation pursuant to subdivision (c) shall not be conducted if an owner or operator demonstrates, by clear and convincing evidence, that the owner or operator would have taken the same adverse action in the absence of the alleged violation of Section 3880.1.

(4) (A) The division may determine that a violation of Section 3880.1 has occurred if an aggrieved employee demonstrates the aggrieved employee's activity specified in subdivision (a) of Section 3880.1 is a contributing factor in the decision to take the adverse action alleged.

(B) The division shall not grant relief to an aggrieved employee if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same adverse action in the absence of an activity specified in subdivision (a) of Section 3880.1.

(5) (A) Within 90 days after the filing of an appeal pursuant to paragraph (2), the Office of Administrative Hearings shall conduct a hearing and issue findings of fact and order or deny the relief specified in Section 3881.

(B) The appeal shall be dismissed if the division, the aggrieved employee, and the person alleged to have committed the violation enter into a settlement agreement. The settlement agreement shall not contain conditions that conflict with the rights protected pursuant to this chapter, are contrary to public policy, or include a restriction on the aggrieved employee's rights to future employment with owners or operators of wells other than those specifically named in the complaint.

3881. (a) If the division determines that a violation of Section 3880.1 has occurred, the division shall order the owner or operator to do all of the following:

(1) Take affirmative action to abate the violation.

(2) Reinstate the aggrieved employee to his or her former position together with compensation, including backpay and prejudgment interest, and restore the terms, conditions, and privileges associated with his or her employment.

(3) Provide compensatory and consequential damages, and, as appropriate, exemplary damages to the aggrieved employee.

(b) The division shall, at the request of the aggrieved employee, award costs, including attorney's and expert witness fees reasonably incurred by the aggrieved employee for, or in connection with, the prosecution of the complaint.

(c) If the division finds that a complaint is frivolous or has been brought in bad faith, the division may award to the prevailing owner or operator reasonable attorney's fees, not exceeding one thousand dollars (\$1,000) to be paid by the aggrieved employee.

3881.5. (a) (1) If, within 300 days after the filing of a complaint, the division fails to issue a preliminary order pursuant to subdivision (d) of Section 3880.5 or if the Office of Administrative Hearings fails to issue an order, the aggrieved employee may bring an action against the owner or operator alleging a violation of this chapter.

(2) If the court determines that a violation has occurred, the court shall grant all appropriate relief, including injunctive relief, and compensatory and consequential damages, including all of the following:

(A) Reinstatement with the same seniority status that the aggrieved employee would have had, but for the violation.

(B) The amount of backpay sufficient to make the aggrieved employee whole, with prejudgment interest.

(C) Exemplary damages, as appropriate.

(D) Reasonable attorney's fees, litigation costs, and expert witness fees.

(b) Within 60 days after the date of issuance of an order by the Office of Administrative Hearings, the owner or operator may file a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure. The commencing of an action under this subdivision shall not, unless ordered by the court, operate as a stay of the order.

3882. (a) An aggrieved employee on whose behalf an order was issued by the division or the Office of Administrative Hearings may bring an action against the owner or operator against whom the order was issued to require compliance with the order.

(b) An action filed pursuant to subdivision (a) is subordinate to an action filed by the division to enforce the order.

(c) The court may award costs, including reasonable attorney's fees and expert witness fees, to a party, as deemed appropriate by the court.

3882.5. This chapter does not limit or supersede any other law that provides relief to an employee against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination.

SEC. 11. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. TAX OIL AND NATURAL GAS TO FUND TAX RELIEF ACT

CHAPTER 1. OIL AND NATURAL GAS SEVERANCE TAX

42001. This part shall be known, and may be cited, as the Tax Oil and Natural Gas to Fund Tax Relief Act.

42002. For purposes of this part, the following definitions shall apply:

(a) "Barrel of oil or gas" means 42 United States gallons of 231 cubic inches per gallon oil computed at a temperature of 60 degrees Fahrenheit or gas, as measured per 1,000 cubic feet (mcf) at a base pressure of 15.025 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit.

(b) "Gas" means all natural gas, including casing head gas, and all other hydrocarbons not defined as oil in subdivision (e).

(c) "Gross value" means the sale price at the mouth of the well, including any bonus, premium, or other thing of value, paid for the oil or gas, as determined by a rolling 30-day average daily value, as established by the market price of the product. The board shall determine the base indexes from which the average shall be calculated. If the oil or gas is exchanged for something other than cash, if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil or gas subject to the tax based on the cash price paid to the producer for like quality oil or gas in the vicinity of the well.

(d) "In this state" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America. "In this state" includes the mean high tide line to three nautical miles off shore.

(e) "Oil" means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(f) "Operator" means a person that, by virtue of ownership, or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control an oil or gas well in the earth or water in this state, including any person that takes oil or gas from the earth or water in this state in any manner, any person that owns, controls, manages, or leases any oil or gas well in the earth or water of this state, and any person that produces or extracts in any manner any oil or gas by taking it from the earth or water in this state; and includes the first person that acquires either the legal title or beneficial title to oil or gas taken from the earth or water in this state by the federal government or a federal instrumentality.

(g) "Political subdivision of the state" includes any local public entity, as defined in Section 900.4 of the Government Code.

(h) "Production" means the total gross amount of oil or gas produced, including the gross amount attributable to a royalty or other interest.

(i) "Severed" or "severing" means the extraction or withdrawing from below the surface of the earth or water of any oil or gas, regardless of whether the extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any

other means employed to get the oil or gas from below the surface of the earth or water, and shall include the extraction or withdrawal by any means whatsoever of oil or gas upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

42010. (a) For the privilege of severing oil or gas from the earth or water in this state, a tax is hereby imposed on all operators at the rate of 25 percent of the gross value of the barrel of oil or gas, and the tax shall be applied equally to all portions of the gross value of each barrel of oil or gas.

(b) Any person that owns an interest, including a royalty interest, in oil or gas or its value is liable for the tax until it has been paid to the board.

42011. Except as otherwise provided in this part, the tax shall be upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state.

42012. The tax imposed by this part shall be in addition to any other taxes imposed by law, including, without limitation, any ad valorem taxes imposed by the state, or any political subdivision of the state, or any local business license taxes that may be incurred for the privilege of severing oil or gas from the earth or water or doing business in that locality. There shall be no exemption from the payment of an ad valorem tax related to equipment, material, or other property by reason of the payment of the tax pursuant to this part.

42013. (a) The tax imposed by this part shall not be passed through to consumers by way of higher prices for oil, natural gas, gasoline, diesel, or other oil or gas consumable byproducts, including propane and heating oil. The board shall monitor

and, if necessary, investigate any instance where operators have attempted to pass through to consumers the tax imposed by this part by materially raising the price of oil, natural gas, gasoline, diesel, or other oil or gas consumable byproducts, including propane and heating oil.

(b) The board shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this section.

(c) The tax imposed by this part shall not diminish the ability of state regulatory agencies to implement and enforce environmental laws, and it shall not affect the liability provisions in those laws to ensure that environmental polluters are held accountable.

(d) This section shall apply only to the extent not superseded by federal law.

42014. Two or more operators that are corporations and are owned or controlled directly or indirectly, as defined in Section 25105, by the same interests shall be considered as a single operator for purposes of application of the tax prescribed by this part.

42015. Each operator shall prepare and file with the board a return in the form prescribed by the board containing information as the board deems necessary or appropriate for the proper administration of this part. The return shall be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the board for the amount of tax due for that period.

42016. (a) The board shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section

55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part and references to "feepayer" shall include a person required to pay the tax imposed by this part.

(b) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(c) The board may prescribe, adopt, and enforce emergency regulations relating to the administration and enforcement of this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

42017. All taxes, interest, penalties, and other amounts collected pursuant to this part, less refunds and costs of administration, shall be deposited into the California Tax Relief Fund.

CHAPTER 2. CALIFORNIA TAX RELIEF FUND

42100. The California Tax Relief Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all revenues in the fund, less refunds and the costs of administration, are continuously appropriated without regard

to fiscal year to the Franchise Tax Board for the purposes of this chapter, and shall be allocated as follows:

(a) One-fourth of 1 percent to the Division of Oil, Gas, and Geothermal Resources for administrative costs related to the oversight of operators that are producers of oil, including those costs related to the implementation of Division 3 (commencing with Section 3000) of the Public Resources Code.

(b) One-fourth of 1 percent to the Division of Oil, Gas, and Geothermal Resources for administrative costs related to the oversight of operators that are producers of natural gas, including those costs related to Division 3 (commencing with Section 3000) of the Public Resources Code.

(c) The remaining revenues to the Franchise Tax Board for payments required by Section 42101.

42101. (a) Annually on the third Wednesday of March, the Franchise Tax Board shall transmit payments, in amounts specified in subdivision (b), to qualified taxpayers and qualified senior taxpayers in the manner provided in Part 10.2 (commencing with Section 18401) of Division 2.

(b) (1) A qualified taxpayer shall receive three hundred eighty dollars (\$380).

(2) (A) A qualified senior taxpayer shall receive fifty dollars (\$50).

(B) A qualified senior taxpayer who also meets the definition of a qualified taxpayer shall also receive three hundred eighty dollars (\$380).

(c) For purposes of this section:

(1) "Qualified senior taxpayer" means an American citizen who is a California legal resident over 65 years of age and is registered to vote in this state.

(2) "Qualified taxpayer" means a California taxpayer who is not claimed as a dependent and, if an individual, has an adjusted gross income of ninety-five thousand dollars (\$95,000) or less; or, if a married couple filing a joint return, a head of household, or a surviving spouse, has an adjusted gross income of one hundred ninety thousand dollars (\$190,000) or less.

42102. Notwithstanding any other law, moneys in the California Tax Relief Fund shall not, in whole or in part, be commingled with or transferred to, or be loaned to, any other fund.

CHAPTER 3. SEVERABILITY

42103. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. To further the purposes of this initiative, the Legislature may amend Sections 1 to 10, inclusive, of this initiative by enacting a statute passed by a two-thirds vote of each house of the Legislature.